

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

THE SHERWIN-WILLIAMS COMPANY,	)	
	)	
Plaintiff-Counterclaim Defendant,	)	Civil Action No. 5:12-cv-03052-JRA
	)	
v.	)	Honorable Judge John R. Adams
	)	
THE WOOSTER BRUSH COMPANY,	)	
	)	
Defendant-Counterclaim Plaintiff.	)	
	)	

**DECLARATION OF ANDREW MARSDEN**

I, Andrew Marsden, pursuant to 28 U.S.C. § 1746, hereby declare the following:

1. I am the Purdy Product Manager at The Sherwin-Williams Company ("Sherwin-Williams"). I have held my current position for approximately five years.
2. My job duties as Purdy Product Manager include new product development for the PURDY brand, as well as product maintenance work such as SKU rationalization, setting up and launching new products in our system, and analyzing sales performance.
3. I started working for Sherwin-Williams approximately 17 years ago. My past positions include internal auditor for Sherwin-Williams stores and various corporate divisions, accounting manager, and materials manager for aerosol paints and applicators.
4. The facts stated in this declaration are based on my own personal knowledge, acquired either through experience or through familiarity with or review of Sherwin-Williams' business records.
5. As the Purdy Product Manager, I have become familiar with the yellow packaging, known as "brush keepers," in which PURDY paint brushes are sold.

6. Since at least as early as 2000, Sherwin-Williams and its predecessors have also used a color code to distinguish certain PURDY paint brushes, including brown to identify XL nylon/polyester filament paint brushes, green to identify Nylox 100% nylon filament paint brushes, and light blue to identify white bristle filament paint brushes (“Color Code Trade Dress”). In 2009, in order to strengthen the brand image of its PURDY paint brushes, Sherwin-Williams began the process of redesigning the PURDY brush keeper packaging while maintaining the Color Code Trade Dress. The redesigned packaging is shown below (the “Brush Keeper Trade Dress”):



7. The Brush Keeper Trade Dress shown above is unique in the painting industry. I am not aware of any other paint brush packages, besides the WOOSTER PRO package and the package for PERFECT paint brushes discussed in paragraph 9 below, that are similar to the Brush Keeper Trade Dress.

8. The following are representative marketing pieces that show use of the Color Code Trade Dress after the conversion to the Brush Keeper Trade Dress, as well as marketing pieces featuring the Brush Keeper Trade Dress:

- A. Exhibit 1, attached hereto, is a true and correct copy of a printer's proof of the "Crafting the Perfect Keeper" sales sheet, which includes a "sub-brand color code reinforcement" call-out for the Color Code Trade Dress and was approved on January 4, 2011. This sales sheet was used during trade shows, including the 2011 Sherwin-Williams trade show, which all of Sherwin-Williams' sales representatives, marketing personnel and vendors are invited to attend.
- B. Exhibit 2, attached hereto, is a true and correct copy of Purdy's 2011 Merchandising Displays catalog, which includes wall and countertop displays that highlight and emphasize the Color Code Trade Dress. *See* SW00001282 and SW00001285. Sales representatives bring this catalog with them when they go on sales calls, primarily to independent paint stores.
- C. Exhibit 3, attached hereto, is a true and correct copy of a Brush Selector Guide created for use by sales associates at Ace Hardware stores that shows Purdy's use of the Color Code Trade Dress.
- D. Exhibit 4, attached hereto, is a true and correct copy of a brochure that was first distributed in Menards stores in 2012 and that features the Color Code Trade Dress. It was primarily used as a training piece for store associates.
- E. Exhibit 5, attached hereto, is a true and correct copy of the 2013 Sherwin-Williams Brush & Roller Catalog, which features images of the PURDY brush keepers bearing the Color Code Trade Dress. *See* SW00050666-69. This catalog was sent to Sherwin-Williams store managers and sales representatives and could be used as a reference guide for sales associates in the stores.

9. In 2013, Sherwin-Williams became aware of the sale of PERFECT paint brushes in the packaging shown below:



Sherwin-Williams filed suit to stop the marketing and sale of the PERFECT paint brushes in the packaging shown above and obtained a judgment by default that enjoined the use of this packaging in a case styled *The Sherwin-Williams Co. v. JP International Hardware*, No. 13-2064, 2013 WL 6767815 (N.D. Ohio Dec. 13, 2013).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23<sup>RD</sup> day of JULY, 2014 at Cleveland, Ohio, USA.



Andrew Marsden

